



The CommLaw Group

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June 16, 2010

VIA ELECTRONIC FILING

EX PARTE

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: **Notice of Ex Parte**

BitWise Communications, Inc. d/b/a OmiLEC Appeal of USAC Decision, CC
Docket Nos. 96-45 and WC Docket No. 06-122; In the Matter of a National
Broadband Plan for Our Future, WC Docket No. 09-51

Dear Ms. Dortch:

On June 15, 2010, BitWise Communications, Inc. ("BitWise") met with Christine Kurth and Rosemary Harold, Legal Advisors to Commissioner McDowell in connection with the above-referenced proceedings. Attending this meeting on behalf of BitWise were John Furton and Tim Reynolds of Family Communications, Inc. ("Family Communications") and Charles Helein and Michael Donahue of Helein & Marashlian, LLC, outside counsel to Family Communications and BitWise.

During this meeting, we discussed Family's acquisition of BitWise, BitWise's broadband expansion plans and BitWise's petition. Copies of the materials presented and discussed at the meeting are enclosed.

If you questions concerning this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/

Michael P. Donahue

Counsel for Family Communications, Inc. and
BitWise Communications, Inc.

Enclosure

cc: Christine Kurth
Rosemary Harold

Family Communications, Inc. and BitWise Communications, Inc.

BitWise Communications, Inc. d/b/a OmniLEC (“BitWise”) provides competitive local exchange services to rural, small town central Illinois. In late 2009, BitWise was acquired by Family Communications, Inc., (“FCI”) a subsidiary of Midstates Video Corp. whose subsidiary, Family Video, is the largest privately held movie and game rental company in the United States.

With the additional resources available from FCI’s acquisition, BitWise has begun its roll-out of new facilities and service offerings. Specifically, BitWise will offer facilities-based, fiber-optic “triple-play” communications, Internet and video services to businesses, schools and residences throughout its existing footprint in Illinois. Its expansion of these services will provide competitive broadband offerings where few or none exist today, thereby fostering the policies of the Commission for promoting competition and bringing broadband services to rural communities. BitWise has already enjoyed its first success when the Pekin City, Illinois Council granted it a twenty-five year franchise to bring its expanded services to that City’s businesses, schools, and residents.

In order to maximize the success of its expansion efforts, FCI is addressing unresolved business and regulatory issues that were created before its acquisition. One such regulatory issue concerns BitWise’s Form 499-A filings for 2008, 2007 and 2006. Due to inadvertent errors, BitWise reported the company’s total revenue in the interstate column of Line 423 (Line 423(d)) on its 2007 and 2006 Forms 499-A. On its Original 2008 Form 499-A, BitWise left line 423(d) completely blank, and USAC unilaterally, and without consulting with BitWise, used the “total” revenue reported in Line 423(a) as the revenue basis upon which contributions were assessed. These errors resulted in significantly overstated revenues subject to USF, TRS, NANP/LNP and annual FCC fees for the relevant years’ contributions. Upon discovery of these errors, BitWise filed revised Forms 499-A for each year. USAC rejected these revisions as untimely filed. Notably, BitWise timely filed its Revised 2008 Form 499-A on March 27, 2009 – four days prior to the deadline for filing revised forms. USAC has not offered any evidence or statement contradicting this fact in the proceeding appealing USAC’s rejection currently before the Wireline Competition Bureau. For this and other reasons, FCI submits that USAC’s rejections were contrary to existing USAC policy, FCC rules, and legal precedent and should be corrected.

To illustrate the adverse impact of BitWise’s inadvertent reporting errors, the following is presented.

For the Original 2008 Form 499-A, FCI estimates that the principal debt referred to collection is \$123,319.77. However, based on the timely filed revision to the 2008 Form 499-A, BitWise’s proper contribution is \$16,547.09. USAC’s rejection of the Revised 2008 499-A resulted in an overpayment of approximately \$106,772.68, exclusive of penalties and interest.



Family Communications, Inc. and BitWise Communications, Inc.

\$123,319.77 – Contribution assessed on erroneous Original 2008 499-A
16,547.09 – Contribution amount based on corrected Revised 2008 499-A
\$106,772.68 – Resulting overpayment for 2008

The overpayment resulting from the Original 2007 Form 499-A is equally large. Based on the erroneous Original 2007 499-A, BitWise was assessed approximately \$79,396.16 for FCC program fees. However, pursuant to its Revised 2007 Form 499-A, BitWise's actual liability is approximately only \$440.68. Thus, the overpayment related to the 2007 Form 499-A is estimated to be \$78,955.48, exclusive of penalties and interest.

\$79,396.16 – Contribution assessed on erroneous Original 2007 499-A
440.68 – Contribution amount based on corrected Revised 2007 499-A
\$78,955.48 – Resulting overpayment for 2007

FCI estimates that its overpayments related to the Original 2006 Form 499-A totaled almost \$10,000. Thus, exclusive of penalties and interest, FCI calculates it has overpaid approximately \$195,000.00 due to the errors made in reporting in the Original 2006-2008 Forms 499-A.

Importantly, upon its acquisition of BitWise, FCI paid in full all outstanding balances owed in connection with BitWise's Original 2006, 2007, and 2008 Forms 499-A and has complied with USAC's pay-and-dispute policy. Then, on June 23, 2009, BitWise appealed USAC's rejections to the Wireline Competition Bureau. BitWise's request was placed on Public Notice on July 21, 2009 and remains pending.

BitWise's appeal has been pending for almost one year. In the meantime, the overpayments related to BitWise's erroneous 499-A filing remain on FCI's books. Since its acquisition of BitWise, FCI has been working diligently to remove all uncertainties and open issues on all business and regulatory matters so that its full energies and resources may be applied to expanding BitWise's services to small town and rural central Illinois and beyond. Therefore, the lingering uncertainty regarding BitWise's appeal needs to be resolved.

It should be noted that, as shown above, the most significant problem concerns USAC's rejection of the Revised 2008 Form 499-A. At the same time, this problem may be the easiest to cure and rectify. All that needs to be done is for the Wireline Competition Bureau to reverse USAC's actions based solely on the mistake of fact that occurred in rejecting BitWise's timely filed Revised 2008 499-A Form and USAC's unauthorized completion of BitWise's Original 2008 Form 499-A.



Family Communications, Inc. and BitWise Communications, Inc.

FCI appreciates the opportunity to introduce itself and its services to the Commission, as well as the Commission's assistance in facilitating a prompt resolution of its appeal of USAC's rejection of BitWise's revised Form 499-A filings.

